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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 705

ELSA S. BURROWS, JOINED BY HER HUSBAND, WALTER F. BURROWS,

Appellants,

vs.

CHARLIE HAGERMAN, AS TAX COLLECTOR OF SARASOTA COUNTY, FLORIDA, et al.

APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

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Of Counsel.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 705

ELSA S. BURROWS, JOINED BY HER HUSBAND, WALTER F. BURROWS,

Appellants,

vs.

CHARLIE HAGERMAN, AS TAX COLLECTOR OF SARASOTA COUNTY, FLORIDA; GLOVER ASHBY, AS TAX ASSESSOR OF SARASOTA COUNTY, FLORIDA; C. M. GAY, AS COMPTROLLER OF THE STATE OF FLORIDA, AND LEROY T. FENNE,

Appellees

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

The sole question presented by this appeal is whether an intangible personal property tax levied by the State of Florida on the beneficial interest of a Florida resident in a foreign trust is prohibited by the Fourteenth Amendment, United States Constitution.

The Supreme Court of Florida affirmed the order of the lower court dismissing a Bill of Complaint as insufficient on its face, whereby appellants sought a Declaratory Judgment against appellees for relief from tax assessments on

intangible personal property levied pursuant to the provisions of Chapter 20724, Laws of Florida, Acts of 1941.

The statute (Florida Statutes Annotated, Title 13, Chapter 199, Section 199.02) defines the property taxed as "the beneficial interest of residents of Florida in Trust Estates of all kinds when the trustee resides outside the State of Florida, or if the trustee is a corporation and has its principal place of business outside of the State of Florida."

Section 199.07 of the statute requires each resident of Florida, "including trustees, • • • to file a sworn return" of intangible property under his control or management, giving the character, description, location and value thereof. The Bill of Complaint shows appellants are residents of Florida but have neglected, failed and refused to file any return, although the Bill likewise discloses appellants both own, control and manage intangible property as trustees and also have beneficial interests in four trust estates within the definition of the statute.

Appellants contended in the Florida Supreme Court, as here, that because (1) the trust instruments were executed in New York, (2) co-trustees (appellants also being co-trustees) are domiciled in New York, and (3) the trust property (largely stocks and bonds) is located in New York, they own no intangible property subject to taxation by the State of Florida. The Florida Supreme Court held that the beneficiaries under the trust instruments are owners "of intangible personal property consisting of a vested beneficial right, interest or estate in the trust fund. This right, interest or estate is separate and distinct from the property right owned and held by the trustees in the personal property which comprises the corpus of the trusts. • • • the taxing situs of the separate distinct beneficial interests of the beneficiaries in the trust funds is at the domicile of the owners in Florida" (Opinion, p. 8).

The Federal question attempted to be raised here is frivolous and devoid of merit and raises no substantial Federal question [1] because appellants' contention is contrary to the established law as settled by the decisions of this Court.[2] On all fours with the present case is that of *Commonwealth* v. *Stewart*, 338 Pa. 9, 12 A2d 444, where Pennsylvania taxed the equitable life interest of a resident of the State in a trust fund created by a resident of another State, which trust consisted of stocks and bonds kept in the latter State and registered in the names of the trustees who were residents of the latter State. The Supreme Court of Pennsylvania held that a tax on such equitable life interest did not violate the Fourteenth Amendment, Constitution of the United States. This Court affirmed [3] on authority of *Curry* v. *McCanless*, 307 U. S. 365, 59 S. Ct. 900, 83 L. Ed. 1339, 123 A. L. R. 162 and *Graves* v. *Elliott*, 307 U. S. 383, 59 S. Ct. 913, 83 L. Ed. 1356.

In *Curry* v. *McCanless*, 307 U. S. 365, 59 S. Ct. 900, 83 L. Ed. 1339, 123 A. L. R. 162, this Court held that the State in which the owner of intangibles has his domicile cannot be deprived by reason of the owner's activities elsewhere, of the State's constitutional jurisdiction to tax intangibles. In that case, a resident of Tennessee, by trust indenture transferred certain intangibles to a trust company in Alabama, which indenture provided that the net income of the trust property should be paid over to the Tennessee resident during her lifetime. She reserved the power to remove the trustee and substitute another, the power to direct the sale of the trust property and the investment of the proceeds and the power to dispose of the corpus by Will. In

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[1] *Bacon and Sons* v. *Martin*, 305 U. S. 380, 59 S. Ct. 257, 83 L. Ed. 233.

[2] *Stewart* v. *Commonwealth of Pennsylvania*, 312 U. S. 649, 61 S. Ct. 445, 85 L. Ed. 1101.

[3] *Stewart* v. *Commonwealth of Pennsylvania*, *supra*.

its Opinion the Court held that both Alabama and Tennessee had the power to tax the intangible property involved, saying:

> "The practical obstacles and unwarranted curtailments of state power which may be involved in attempting to prevent the taxation of diverse legal interests in intangibles in more than a single place, through first ascribing to them a fictitious situs and then invoking the prohibition of the Fourteenth Amendment against their taxation elsewhere, are exemplified by the circumstances of the present case. Here, for reasons of her own, the testatrix, although domiciled in Tennessee and enjoying the benefits of its laws, found it advantageous to create a trust of intangibles in Alabama by vesting legal title to the intangibles and limited powers of control over them in an Alabama trustee. But she also provided that by resort to her power to dispose of property by will, conferred upon her by the law of the domicile, the trust could be terminated and the property pass under the will. She thus created two sets of legal relationships resulting in distinct intangible rights, the one embodied in the legal ownership by the Alabama trustee of the intangibles, the other embodied in the equitable right of the decedent to control the action of the trustee with respect to the trust property and to compel it to pay over to her the income during her life, and in her power to dispose of the property at death."

In *Graves* v. *Elliott*, 307 U. S. 383, 59 S.Ct. 913, 83 L. Ed. 1356, the Court was asked to decide whether the State of New York might constitutionally tax the relinquishment at death by a domicile resident of that state of a power to revoke a trust of intangibles held by a Colorado trustee. The trust was created in Colorado and all evidences of the intangibles comprising the trust fund remained in the possession of the trustee in Colorado, but the trust instrument reserved to the donor the right to remove the trustee, to

change any beneficiary of the trust, and to revoke the trust and revest herself with the title to the property. After the trust was created the donor became and remained a domiciled resident of New York until her death. This Court held:

> "The essential elements of the question presented here are the same as those considered in No. 339, Curry *v.* McCanless, decided this day (307 U. S. 357, ante, 1339, 59 S. Ct. 900, 123 A. L. R. 162). As is there pointed out, the power of disposition of property is the equivalent of ownership. It is a potential source of wealth and its exercise in the case of intangibles is the appropriate subject of taxation at the place of the domicile of the owner of the power. • • •
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> "For reasons stated in our opinion in Curry *v.* McCanless, 307 U. S. 357, ante, 1339, 59 S. Ct. 900, 123 A. L. R. 162, *supra*, we cannot say that the legal interest of decedent in the intangibles held in trust in Colorado was so dissociated from her person as to be beyond the taxing jurisdiction of the state of her domicile more than her other rights in intangibles. Her right to revoke the trust and to demand the transmission to her of the intangibles by the trustee and the delivery to her of their physical evidences was a potential source of wealth, having the attributes of property. As in the case of any other intangibles which she possessed, control over her person and estate at the place of her domicile and her duty to contribute to the support of government there afford adequate constitutional basis for imposition of a tax measured by the value of the intangibles transmitted or relinquished by her at death."

The principles of the *McCanless* case and the *Graves* case are applicable here. In each of the trusts involved the domiciled residents of the State of Florida own a beneficial interest in the trust property which is made taxable by the statute quoted above. There is no allegation in the Bill of

Complaint nor in the Opinion of the Florida Supreme Court that an attempt is being made to tax all of the intangibles in the trust funds. The property being taxed is the beneficial interest of the residents of Florida in the trust estates. No complaint is made as to the method of determining the value of such beneficial interest.

The case of *Brooke* v. *City of Norfolk*, 277 U. S. 27, 48 S. Ct. 422, 72 L. Ed. 767, is not in point because in that case the City of Norfolk attempted to levy a tax on a resident's interest in a trust fund "as if she owned the whole." Such is not the case here.

By reason of the foregoing, no substantial Federal question is presented by this appeal. The alleged Federal question is frivolous and devoid of merit. Wherefore, appellees move the Court to dismiss the appeal, or, in the alternative, if this Court does have jurisdiction, to affirm the decision of the Supreme Court of Florida.

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